

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed September 24, 2003. At the time of the Office Action, Claims 1-42 were pending in this patent application. Claims 1-42 were rejected. Applicants respectfully request reconsideration and favorable action in this case.

Section 102 Rejections

The Final Office Action rejected Claims 1, 2, 11, 13-15, 24, 26-28, 37 and 39 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,195,414 issued to Dans ("*Dans*"). Applicants respectfully traverse these rejections for the reasons stated below.

In order to establish a *prima facie* case of anticipation, all the elements of the claimed invention must be found within a single prior art reference. *Dewey & Almy Chemical Co. v. Mimex*, 124 F.2d 986, 52 USPQ 138 (2d Cir. 1942). Applicants respectfully submit that each and every element of the claimed invention is not found within the *Dans* reference.

Claim 1 is directed to a method for prioritized access to a messaging system that includes receiving, at an access controller for a messaging system, a request by a user of the messaging system to be connected with the messaging system. The method further includes determining whether the messaging system is available. If the messaging system is available, a telecommunications connection is established between the user and the messaging system. If the messaging system is not available, the request is queued and a telecommunications connection is maintained between the access controller and the user while the request is queued. *Dans* does not disclose, teach or suggest each of these limitations.

Dans is directed to "a system which calls telephone accessible bank information systems to verify account transactions . . . and stores the responses to their inquiries." *See Dans, column 2, lines 41-47*. For example, the system may be used to "process thousands of checking transactions to be drawn against hundreds of different banks." *See Dans, column 2, lines 47-49*. Such transactions "arrive from one or more sources, including for example other computer applications, callers using touch-tone telephones, and a system operator who enters them directly. These inquiries are passed from the feed applications into a main computer containing the scheduler." *See Dans, column 3, lines 5-10*.

Thus, users of *Dans'* system enter check information into a computer either locally (operator inputting data directly) or remotely (users calling the system of *Dans*). *See i.d.*

The system of *Dans* then schedules the transactions to determine what order to process the transactions. *See i.d.* Finally, the system of *Dans* contacts computer systems associated with various banks, and interacts with such computer systems to verify the check transaction information. *See Dans, column 3, lines 10-16.*

The Final Office Action entirely mischaracterizes *Dans*, as it applies to the teachings of the present invention. For example, the Final Office Action suggests that the telephone accessible bank information system of *Dans* is equivalent to the messaging system of the present invention, the main computer of *Dans* is equivalent to the access controller of the present invention, and the callers using touch-tone telephones and system operator of *Dans* are equivalent to the user of the present invention. However, these analogies fail to teach, suggest, or disclose the teachings of the present invention.

For example, using the analogies of the Final Office Action, the Office Action suggests that the main computer of *Dans* receives requests for connection with the telephone accessible bank information systems, from callers using touch-tone telephones, and/or a system operator. However, neither the callers using touch-tone telephones nor the system operator of *Dans*, are requesting to be connected with the telephone accessible bank information systems. Instead, the callers using touch-tone telephones, and the system operator of *Dans* merely enter check transaction information into the main computer. The main computer then schedules the transactions and calls the bank computer systems, according to that schedule.

Thus, *Dans* does not disclose, teach, or suggests that a request to be connected with a messaging system is received at an access controller, that a telecommunications connection is established between the user and the messaging system if the messaging system is available, or that a telecommunications connection is maintained between the access controller and the user while the request is queued. For at least these reasons, Applicants respectfully contend that Claim 1 is patentably distinguishable from *Dans*.

Claims 2-13 each depend, either directly or indirectly, from Claim 1. Therefore, Applicants respectfully contend that Claims 2-13 are patentably distinguishable from *Dans*, for example for the same reasons discussed above with regard to Claim 1.

Claim 14 is directed to an access controller for a messaging system. The access controller includes means for establishing a telecommunications connection between the user and the messaging system, if the messaging system is initially available, and means for queuing the request at the access controller and maintaining a telecommunication connection

between the user and the access controller, if the messaging system is not available. As described above with regard to similar limitations of Claim 1, *Dans* does not disclose, teach, or suggest each of these limitations. Therefore, Applicants respectfully contend that Claim 14 is patentably distinguishable from *Dans*.

Claims 15-26 each depend, either directly or indirectly, from Claim 14. Therefore, Applicants respectfully contend that Claims 15-26 are each patentably distinguishable from *Dans*, for example for the same reasons described above with regard to Claims 1 and 14.

Claim 27 is directed to a system for prioritized access to a messaging system that includes logic encoded in media, the logic being operable to queue a request for connection and maintain a telecommunications connection with the user while the request is queued, if the messaging system is not available. The logic is further operable to establish a telecommunications connection between the user and the messaging system, if the messaging system is initially available. As discussed above with regard to similar limitations of Claim 1, *Dans* does not disclose, teach, or suggest each of these limitations. Therefore, Applicants respectfully contend that Claim 27 is patentably distinguishable from *Dans*, for example for the same reasons discussed above with regard to Claim 1.

Claim 28-39 each depend, either directly or indirectly, from Claim 27. Therefore, Applicants respectfully contend that Claims 28-39 are each patentably distinguishable from *Dans*, for example for the same reasons discussed above with regard to Claim 1.

Claim 40 is directed to a method for prioritized access to a messaging system in which a request for connection by a user to a messaging system is queued at an access controller if a port of the messaging system is not available. Further, a telecommunications connection is established between the user and the messaging system when a port of the messaging system becomes available and the request is at a primary position in a queue of the access controller. As discussed above with regard to Claim 1, *Dans* does not disclose, teach, or suggest each of these limitations. Therefore, Applicants respectfully contend that Claim 40 is patentably distinguishable from *Dans*.

Claims 41-42 each depend from Claim 40. Therefore, Applicants respectfully contend that Claims 41 and 42 each are patentably distinguishable from *Dans*, for example for the same reasons discussed above with regard to Claims 1 and 40.

Section 103 Rejections

The Final Office Action rejected Claims 3, 16 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* as applied to Claim 1 above, and in view of U.S. Patent No. 6,459,681 issued to Oliva. ("*Oliva*"). The Final Office Action rejected Claims 4-6, 17-19, 30-32 under 35 USC §103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3, and in view of U.S. Patent No. 6,115,751 to *Tam et al* and US. Patent No. 6,519,333 to *Malik*. The Final Office Action rejected Claims 7, 20 and 33 under 35 USC §103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3, and in view of *Tam* and U.S. Patent No. 6,493,445 to *Garland et al*. The Final Office Action rejected Claims 8, 21 and 34 under 35 USC §103(a) as being unpatentable over *Dans*, *Oliva*, *Tam et al*, and *Garland et al* as applied to Claims 7, and in view of U.S. Patent No. 6,519,333 to *Malik*. The Final Office Action rejected 9, 10, 22, 23, 35 and 36 under 35 USC §103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3, and in view of *Tam et al* and U.S. Patent No. 6,590,862 *Ash et al*. The Final Office Action rejected Claims 12, 25 and 38 under 35 USC §103(a) as being unpatentable over *Dans* as applied to Claim 1, and in view of U.S. Patent No. 6,512,825 to *Lindholm et al*. The Final Office Action rejected Claim 40 under 35 USC §103(a) as being unpatentable over *Dans*, and in view of U.S. Patent No. 6,529,500 to *Pandharipande*. The Final Office Action rejected Claim 41 under 35 USC §103(a) as being unpatentable over *Dans* and *Pandharipande* as stated in Claim 40, and in view of *Oliva*. The Final Office Action rejects 42 under 35 USC §103(a) as being unpatentable over *Dans* and *Pandharipande* as stated in Claim 40, and in view of U.S. Patent No. 6,456,699 to *Burg et al*.

Each of the rejections under §103 of the Final Office Action rely upon *Dans* as disclosing, teaching, or suggesting the limitations discussed above with regard to Claim 1. As discussed above with regard to Claim 1, *Dans* does not disclose, teach, or suggest each of the limitations suggested by the Final Office Action. For at least these reasons, Applicants respectfully contend that all pending claims of the present application are patentable over *Dans* and further patentable over *Dans* in view of the various combinations of references used by the Examiner throughout the Final Office Action.

The Final Office Action cites many combinations of references to reject claims of the present invention. Applicants note that the Final Office Action fails to offer any evidence in such references that provide any suggestion or motivation to make the proposed combinations. Moreover, the Final Office Action fails to show that the proposed combinations could have been based on the knowledge available to one having ordinary skill

in the art. The Final Office Action also fails to identify any evidence relating to an expectation of success in making any of the proffered combinations, much less a reasonable expectation of success as is required to support a proper §103 rejection. (See M.P.E.P. §2143.) Therefore, Applicants respectfully submit that the combinations proposed by the Final Office Action are improper, and cannot support any rejection under 35 U.S.C. §103.

CONCLUSION

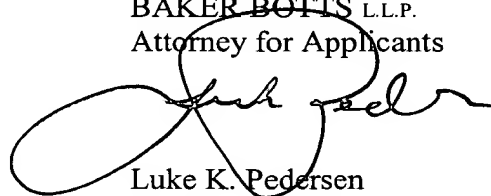
Applicants have now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of Claims 1-42.

Attached herewith is a check in the amount of \$770.00 made payable to the "Commissioner of Patents and Trademarks" to satisfy the request for continued examination fee of 37 CFR 1.117(e).

Although Applicants believe that no other fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P. In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call its attorney at the number listed below.

Respectfully submitted,
BAKER BOTTS L.L.P.
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Date: 12/23/03

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